

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-820

August 23, 1999

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Sale of Generation
Assets

SUPPLEMENTAL ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

We authorize a modification of the terms of sale by Bangor Hydro-Electric Company (BHE) to Penobscot Hydro, LLC (Penobscot), a wholly-owned subsidiary of PP&L Global, Inc. (PPLG), of BHE's interest in the West Enfield Hydro project.

On February 3, 1999, the Commission issued an Order authorizing the sale of BHE's interest in certain generation assets to Penobscot, in accordance with the terms and conditions of an Asset Purchase Agreement (APA) between BHE and PPLG dated September 25, 1998. *Bangor Hydro-Electric Company, Request for Approval of Sale of Generation Assets*, No. 98-820 (February 3, 1999). The February 3 Order approved, *inter alia*, the sale and transfer to Penobscot Hydro, LLC by Penobscot Hydro Co., Inc. (PHC), a wholly-owned subsidiary of BHE, of PHC's 50% interest in the partnership known as Bangor-Pacific Hydro Associates, which owns the West Enfield Hydro project (the partnership interest).

On May 27, 1999, BHE and Penobscot completed the purchase and sale of all the assets to be purchased under the APA except for the partnership interest. Shortly before the closing, questions arose regarding whether the transfer of the partnership interest would result in a technical dissolution of the partnership under the Maine Uniform Partnership Act. As a result, BHE temporarily retained the partnership interest and Penobscot temporarily retained that portion of the total purchase price which was attributable to the partnership interest.

After BHE concluded that there were no tax advantages to keep BHE from structuring the transaction either as a transfer of PHC stock or as a transfer of the partnership interest, and to avoid problems associated with a technical dissolution of the partnership, BHE and Penobscot agreed to restructure the transaction. Specifically, the parties entered into an Asset Purchase Implementation Agreement dated May 27, 1999 (Implementation Agreement), whereby initially the economic interest (as opposed to the voting rights) associated with PHC's ownership of the partnership interest would be transferred and later, once the Commission had issued a supplemental order authorizing the restructured transaction, the PHC stock would be transferred.

The assignment by PHC of its economic interest was completed on July 28, 1999, at which time BHE received from Penobscot the full amount of the purchase sale price attributable to the West Enfield partnership interest. Pursuant to the Implementation Agreement, PHC has retained the balance of its interest in the partnership including its voting rights.

BHE offers the affidavit of its Vice President-Finance and Law and Chief Financial Officer, who concludes that the implementation agreement does not have a material adverse effect on BHE or its customers. The implementation agreement simply modifies the APA to provide for the transfer to Penobscot of the ownership of BHE's wholly-owned subsidiary, PHC, rather than transfer PHC's only asset, the partnership interest.

The proposed transfer is subject to the approval of the Commission under 35-A M.R.S.A. § 1101. In addition, the shares of PHC's stock are "voting securities" as defined in 35-A M.R.S.A. § 707(1)(C) and therefore the proposed transaction constitutes a reorganization as defined in 35-A M.R.S.A. § 708. Reorganizations also require Commission approval.

The Company's original involvement in the redevelopment of the West Enfield Hydro-Electric facility was approved by the Commission in 1986. *Bangor Hydro-Electric Company, Transfer Under 35 M.R.S.A. § 104 and § 211, Regarding BHE Participation in West Enfield Hydro-Electric Project*, No. 86-016, (May 27, 1986). In that decision, the Commission approved a stipulation which requires Commission approval, except in limited circumstances not applicable here, of any divestiture of BHE of the West Enfield partnership interest. Accordingly, BHE also requests Commission approval under the Docket No. 86-016 Order of the proposed transfer of PHC's stock.

All parties to this proceeding join in a stipulation filed by BHE. In the stipulation, the parties recommend that the Commission grant BHE's Motion. The parties also agree to certain procedural provisions, including a waiver of any rights to appeal the Supplemental Order.

We accept BHE's representations, and the parties' recommendation, that there is no material difference for ratepayers or BHE between transferring PHC's partnership interest and transferring PHC's stock. We therefore find that the proposed modification is reasonable.

Accordingly, we

ORDER

1. That the transfer by Bangor Hydro-Electric Company of its Penobscot Hydro Company, Inc. stock is approved pursuant to 35-A M.R.S.A. § 708;

2. That the transfer by Bangor Hydro-Electric Company of its Penobscot Hydro Company, Inc. stock is approved pursuant to the Commission Order in Docket No. 86-016 of May 27, 1998;
3. That the proposed sale and transfer of the Penobscot Hydro Company, Inc. stock is in accordance with Bangor Hydro-Electric Company's divestiture plan approved by the Commission in Docket No. 98-114; and
4. That the modification to Bangor Hydro-Electric Company's sale of the West Enfield partnership interest as provided in the implementation agreement is authorized pursuant to 35-A M.R.S.A. § 1101.

Dated at Augusta, Maine, this 23rd day of August, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.